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In The Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-593

CENTRAL TABLET MANUFACTURING CO.,
Petitioner,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CIVIL DOCKET
UNITED STATES DISTRICT COURT

CENTRAL TABLET MANUFACTURING CO.
1876 GREENWAY NORTH
COLUMBUS, OHIO
V.
THE UNITED STATES

DOCKET ENTRIES

Date	Proceedings
4-16-69	Complaint filed. Summons, copies complaint MSDO.
5-13-69	Marshal's return filed. Fee $3.00
6-16-69	Answer filed.
11-11-71	Deposition of Larry H. Snyder, filed.
11-30-71	Praecipe for Subpoena filed: James A. Wroe.
12-10-71	Subpoena returned executed 12-6-71, filed. Fee $3.20.

Date	Proceedings
12-10-71	Statement of uncontested facts and of the issues filed.
1-10-72	Brief of Pltf, filed. (to CBR)
1-12-72	Transcript of Proceedings Held 12-21-71 bebefore the Hon. Carl B. Rubin,
1-31-72	Brief for the Defendant, U.S.A. filed.
2-11-72	Reply Brief on Behalf of Plaintiff, Filed.
3- 9-72	Opinion and Order filed: the deficiency assessments entered by the Internal Revenue against the Plaintiff were erroneous as a matter of law and that plaintiff is entitled to refund for its 1963 and 1955 tax years. Judgment is hereby entered in plaintiff's behalf for $81,981.60, less an amount representing the tax difference between ordinary income deduction and the capital expenditure deduction on $8,000.00. This latter figure, and the final judgment award, shall be computed by the defendant, approved by the plaintiff, and forwarded to the Court, within twenty (20) days of receipt of this opinion. (copies to Larry Snyder, and the U.S. Attorney).
3-24-72	Stipulation Re Entry of Judgment, Filed.
3-24-72	Judgment Filed.
5-23-72	Notice of Appeal filed.
6- 7-72	Record certified to the U.S.C.A. 6th

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Central Tablet Manufacturing Co.,

Plaintiff-Appellee,

vs.

United States of America,

Defendant-Appellant.

Case No. 72-1582

Date	Filings - Proceedings
6-12-72	Certified record (1 vol. of pleadings, deposition and transcript), filed; and cause docketed
6-14-72	Appearance of counsel for Appellee
6-16-72	Appearance of counsel for Appellant
6-20-72	Appellant's designation of record for appendix
6-20-72	Statement of the issue to be presented by Appellant
6-21-72	Counter-designation of Appellee of record for appendix
7-24-72	Twenty-five copies of Brief for Appellant, with proof of service
7-24-72	Ten copies of Appendix
8-24-72	Twenty-five copies of Brief for Appellee
8-24-72	Proof of service for brief of appellee
9- 7-72	Twenty-five copies of Reply Brief for Appellant, with proof of service
12- 5-72	Cause argued and submitted (Before: McCree, Kent and McAllister, JJ.)
7-12-73	Judgment of the District Court reversed and the case is remanded for further proceedings Z-1.

7-12-73	Opinion by McCree, J.
7-23-73	Appellant's bill of costs with proof of service
8- 7-73	Mandate issued (Costs to be recovered by Appellant—$190.75 for printing)
	Opinion with mandate
10- 3-73	Request for certification and transmission of record to Supreme Court
10- 4-73	Certified record for certiorari mailed to Supreme Court
10- 9-73	Notice of filing for petition for certiorari on 10- 3-73 (Sup. Ct. 73-593)

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil No. 69-116

Central Tablet Manufacturing Co.
1876 Greenway North
Columbus, Ohio 43219

Plaintiff,

vs

The United States

Defendant.

COMPLAINT

1. Plaintiff says that it is an Ohio corporation; that on May 3, 1967, it voluntarily filed a certificate of dissolution in the office of the Secretary of State of Ohio; that under Section 1701.88, Revised Code of Ohio it continues to exist for the purpose of winding up its affairs and has the capacity to bring the within action; and that jurisdiction of this action is conferred upon this Court by Title 28 U. S. C. A., Section 1346 (a).

2. That this action arises under Sections 61 and 451

and Section 337 and Section 1245 of the Internal Revenue Code of 1954, and plaintiff has a just claim against defendant for the sum of $81,981.60, together with interest as provided by law.

3. That plaintiff filed timely reports of its taxable income for the taxable years of plaintiff ending October 31, 1963 and October 31, 1965, and made timely payment of the tax due on the income reported.

4. That on November 22, 1967, plaintiff received a thirty day letter and an examination report and related documents from the District Director of Internal Revenue, Cincinnati, Ohio, copies of which are attached hereto and marked Exhibit A, finding additional tax due for the year ending October 31, 1963, of $11,131.00 and additional tax due for the year ending October 31, 1965 of $62,568.00. [p. 2][5]. That the additional tax found due for the year ending October 31, 1963, in the amount of $11,131.00, together with interest of $799.30, was paid by check dated July 30, 1968, and the additional tax found due for the year ending October 31, 1965, in the amount of $62,568.00, together with interest of $7,483.30, was paid by check dated February 5, 1968.

6. That thereafter on the 18th day of September, 1968, plaintiff filed with the District Director of Internal Revenue, Cincinnati, Ohio in accordance with statute, claims for refund of the additional tax paid for the tax year ending October 31, 1963, together with the interest paid thereon in the total amount of $11,930.30, and for refund of the additional tax paid for the tax year ending October 31, 1965 together with the interest paid thereon in the total amount of $70,051.30, and duly demanded the refund and payment of said amounts with interest as provided by law. Copies of said claims for refund are attached hereto and marked Exhibit B and Exhibit C.

7. That on March 25, 1969, plaintiff filed with the District Director of Internal Revenue, Cincinnati, Ohio, a Waiver of Statutory Notification of Claim Disallowance, copy attached hereto and marked Exhibit D, and Acceptance of Proposed Disallowance of Claim for Refund or Credit, copy attached hereto and marked Exhibit E in connection with the disallowance of its claims for refund aforesaid; that in addition more than six months have passed since the filing of its claims for refund.

8. That on September 10, 1965, a fire occurred at plaintiff's business and manufacturing premises; that on May 14, 1966 the stockholders of plaintiff voted to dissolve the corporation and adopted a complete plan of liquidation of the corporation; that thereafter, and after lengthly negotiations, plaintiff received the sum of $330,509.77 from fire insurance as a result of said fire and received the sum of $67,000.00 from business interruption insurance as a result of the said fire.

9. That the additional tax found due for the taxable year ending October 31, 1965 is based upon the inclusion by the District Director in the taxable year ending October 31, 1965 of the following [p. 3] sums received by plaintiff from fire and business interruption insurance:

a) $223,669.00 (the excess of fire insurance proceeds over net book value) received from fire insurance after the adoption of the complete plan of liquidation on May 14, 1966 and distributed, together with all other assets of plaintiff, within the 12 month period beginning on the date of adoption of the plan of liquidation in accordance with Section 337 of the Internal Revenue Code of 1954 and included by the District Director as long term capital gain in the year ending October 31, 1965.

b) $12,992.00 which represents a pro rata part of the

sum of $67,000.00 received in the year ending October 31, 1967 from business interruption insurance payable as a result of the fire aforesaid.

c) $20,764.00 which represents that part of the total proceeds from fire insurance which is attributable to gain as a result of depreciation under Section 1245 of the Internal Revnue Code of 1954 included as ordinary income on the basis of the contention of the District Director that the proceeds from fire insurance are not excluded from tax under Section 337.

10. That the additional tax found due for the taxable year ending October 31, 1963 results from a decrease in the operating loss carryback to that year on the basis of the following adjustments by the District Director.

a) the inclusion as income for the year ending October 31, 1966 of the sum of $54,000.00 which represents a pro rata part of the proceeds of $67,000.00 received by plaintiff during the taxable year ending October 31, 1967 from business interruption insurance as a result of the fire occurring at plaintiff's premises on September 10, 1965.

b) the disallowance as an expense in the year ending October 31, 1966 of legal fees in the amount of $4,000.00 paid by plaintiff during the year for services rendered in the negotiation and adjustment of the fire insurance losses.

11. That the District Director of Internal Revenue erroneously and illegally determined that Section 337 of the Internal Revenue Code of 1954, is inapplicable to the proceeds from fire insurance received by plaintiff after it had adopted a complete plan of liquidation; and erroneously and illegally determined that the $67,000.00 from business interruption insurance was not taxable in the year ending October 31, 1967, the taxable year in which it was received by taxpayer, but was includable in the income of the two preceding years pro-rated over

the period of business interruption; and erroneously and illegally determined that the sum of $20,764.00 was taxable as ordinary income in the year ending October 31, 1965, under Section 1245 of the Internal Revenue Code of 1954; and erroneously and illegally determined that the sum of $4,000.00 paid for legal services in the year ending October 31, 1966 was not allowable as an ordinary business expense.

12. That no part of the sum of $81,981.60 the total amount of the tax and interest erroneously and illegally collected from plaintiff has been refunded to plaintiff.

WHEREFORE, plaintiff demands judgment against defendant for the sum of $81,981.60, together with interest as provided by law.

/s/ LARRY H. SNYDER
CHAMBLIN, SNYDER AND HENRY
Attorneys for Plaintiff
209 South High Street
Columbus, Ohio 43215

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

CIVIL ACTION NO. 69-116

CENTRAL TABLET MANUFACTURING CO.,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

ANSWER

The defendant, the United States of America, by its attorney, Roger J. Makley, Esquire, United States At-

torney for the Southern District of Ohio answers the complaint as follows:

1. Defendant denies present information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint.

2. Defendant denies the allegations contained in paragraph 2 of the complaint.

3. Defendant admits that plaintiffs tax returns for taxable years ended October 31, 1963, and October 31, 1965, were timely filed but denies present information or knowledge sufficient to form a belief as to the fact of payments with respect thereto.

4. Defendant admits the allegations contained in paragraph 4 of the complaint.

5. Defendant denies present information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint.

6. Defendant admits that the claim for refund in the amount of $70,051.30 for taxable year ended October 31, 1965, was filed as alleged but denies present information or knowledge sufficient to form a belief as to the filing of a claim for refund for the taxable year ended October 31, 1963.

7. Defendant admits the allegations contained in paragraph 7 of the complaint.

8. Defendant denies present information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.

9. Defendant admits the allegations contained in paragraph 9 of the complaint.

10. Defendant admits the allegations contained in paragraph 10 of the complaint, except alleges that the figure in subparagraph (a) included in taxpayer's in-

come for 1966 should read $54,008.00 rather than $54,000.00.

11. Defendant denies the allegations contained in paragraph 11 of the complaint.

12. Defendant denies present information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the complaint.

WHEREFORE, defendant prays that judgment be entered in its favor dismissing the plaintiff's complaint with prejudice, together with costs and such other and further relief as to the Court seems proper.

/s/

United States Attorney

[CERTIFICATE OF SERVICE OMITTED]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil No. 69-116

Central Tablet Manufacturing Co.,
Plaintiff,

vs.

United States of America,
Defendant.

DEPOSITION

of LARRY H. SNYDER, a witness called on behalf of Defendant under the applicable Rules of Federal Civil Court Procedure, taken before me, Irmgard E. Modlich, Certified Shorthand Reporter, a Notary Public in and for the State of Ohio, pursuant to agreement, at the offices of Chamblin, Snyder & Henry, 209 South High

Street, Columbus, at 9:30 o'clock a.m., Tuesday, October 19, 1971.

APPEARANCES:

STEPHEN J. CSONTOS,
Attorney at Law,
Tax Division, U. S. Department of Justice,
Washington, D. C. 20530,
On behalf of Defendant.

[2]

Tuesday Morning Session
October 19, 1971

STIPULATION

It is stipulated by and between counsel for respective parties that the deposition of Larry H. Snyder, a witness called on behalf of Defendant, may be taken at this time by the Notary, by agreement of counsel; that said deposition may be reduced to writing in stenotypy by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the examination, reading and signature of the said Larry H. Snyder to the transcript of his deposition is expressly waived by counsel and the witness, said deposition to have the same force and effect as though signed by the said Larry H. Snyder.

Larry H. Snyder

being first duly sworn, as provided by law, was examined and testified as follows:

Direct Examination

By Mr. Csontos:

Q. State your full name and home address for the

record, please? A. Larry H. Snyder, 324 North Drexel Avenue, Columbus, [3] Ohio.

Q. And your business address? A. 209 South High Street, Columbus, Ohio.

Q. And, Mr. Snyder, you are counsel for the Plaintiff in this action, Central Tablet Manufacturing Company? A. Yes.

Q. And this taxpayer during the years in which it was operating was an accrual basis taxpayer? A. Yes.

Q. Around September 10 of 1965 a fire occurred at the manufacturing plant of this company, didn't it? A. Yes. Manufacturing plant and general offices.

Q. And this resulted in substantial destruction of the properties? A. Yes.

Q. And ultimately as a result of this fire the company went out of business, is that right? A. That's right.

Q. Could you describe for us the types of insurance coverage which the company had in existence as of September 10, 1965? A. Well, they had a building and extended coverage. They had personal property and contents coverage and they had business interruption insurance.

Q. The building coverage, would that have covered[4] equipment or not? A. No, it would not have covered equipment.

Q. Just the physical structure? A. Just the physical structure.

Q. How many policies were there and what were the amounts of those policies? A. There were three policies. The maximum liability on each of the three was $75,000.00, so the total coverage on the surace was $225,000.00.

Q. And the personal property and contents insurance,

what were the limits of those policies? A. $400,000.00, and there was only a single policy as I recall.

Q. And with whom was that policy placed? A. The Home Insurance Company.

Q. And the business interruption insurance, how many policies were there and what were the limits of those policies? A. There were two policies. The specified maximum limit on each was $100,000.00.

Q. Now, those two policies, were they identical except for the insurer? A. Yes.

Q. And with respect to the three building insurance policies, were those policies identical except for the insurers? A. Yes. [5]

Q. Did the company obtain all of these policies from the same insurance agency? A. I believe so. Yes. I am not familiar with the policies. The policies were in existence for some time before I was familiar with them, but I think they did come from the same agency, yes.

Q. Is the agency indicated on these policies? A. Yes. It is the Atkinson-Dauksch and Tallmadge Agencies in Columbus, Ohio.

Q. At what point did you enter the picture with respect to these insurance policies or after the fire? A. Is the after the fire a part of your question?

Q. Yes. What I mean is did you assist in giving notice to the insurance companies? A. Yes.

Q. You did? A. I did.

Q. And was notice promptly given to all of the insurance carriers with respect to the three types of policies? A. It was promptly given although the insurance companies subsequently denied that it was properly given.

Q. Did they deny the sufficiency of your statements?

A. Yes. And the preparation and form in which the proofs of loss were submitted.

Q. And the proofs of loss were submitted when, sir? [6] A. I will have to refer to my files. I don't recall.

Q. All right. According to your files the date on which the notice was given was when, sir? A. October 18, 1965 all the notices to the six involved insurance companies was given.

Q. Now, when did negotiations begin with respect to settlements of any of these three policies or what is the earliest — A. Well, negotiations really didn't start until September of 1965. There was a meeting, as I recall, approximately October 8, 1965 which, again, my recollection is that it was really no more than a preliminary meeting to, really, in some fashion to try and define how we would proceed with negotiations.

Q. And was that with respect to all three types of coverage? A. Well, all three types of coverage of course were involved. The same adjustment firm or adjusting firm represented all of the insurance companies involved in this case.

Q. And who was that, sir? A. The General Adjustment Bureau.

Q. And were you dealing with any one or two particular people there? Were you dealing with several people? A. Principally there were three people that we dealt with. [7]

Q. Who were they? A. Well, one name is Eugene Streng, S-t-r-e-n-g, Wilson Keller was the Secretary, and James Wroe, W-r-o-e, was the third.

Q. Did the representative of the insurance companies ever deny that there was liability under any of these three policies? A. Well, they denied the extent of liability, the exent of coverage, yes.

Q. They said that you were entitled to no recovery under, for example, the business interruption insurance policy? A. No. They never said that. But we did argue with regard to all three types of policies as to the perimeters of the coverage, what was covered, what loss was covered.

Q. All right. So that you didn't have to argue with them about whether or not there was coverage but with respect to how much of the loss was covered. Would that be a correct statement. A. No. Not how much. What loss was — in some instances what loss was covered. I might add, there was some question as to how much of the loss was covered, what the maximum coverage was. But there were also questions as to what was covered by this loss.

Q. Now, what I am trying to drive at, Mr. Snyder, I am sure you are pretty well aware — perhaps I am not phrasing [8] my questions very well — is once negotiations began with The General Adjustment Bureau the parties at least assumed that your client was entitled to some recovery under each of the three different types of policies, isn't that true? A. I think that's fairly stated, yes. But there was a question of what the extent of the coverage was.

Q. And the insurance carriers, did their representatives in these negotiations say that your company isn't entitled to anything whatsoever under the building policy or under the personal property policy or under the business interruption policy? A. No, they didn't say that. But let me explain that they did at one point deny that our proofs of claim were properly presented, and they reserved the right, without saying so obviously, to deny any liability entirely. I will say, in all honesty, I think that was a negotiating position. I don't think seriously

they intended to claim that but nevertheless they took this position officially.

Q. With respect to the business interruption policy, can you tell me when you started discussing hard figures with The General Adjustment Bureau what those figures were in the first instance on your side and their side? A. I can't, without referring to some notes that I made, and I am not sure that they will reveal that exactly but I can look if you want me to. [9]

Q. Fine. A. As near as I can reconstruct from my notes, I believe the question was when did we talk about figures. It had to have been sometime after July of 1966 we talked dollars.

Q. And can you tell from your records, sir, when you first started talking specifically about the business interruption insurance with them? A. The question of business interruption insurance came up really in October of 1965 the first time. The format of that discussion was when the company theoretically, if it were going to go back in business, was required to start rebuilding, what was the length of time that you had to gather your operation together to go forward.

Q. Now, in July of 1966 or after July, in connection with the business interruption insurance, what figures were discussed by you as representative of Plaintiff and by the insurance companies' representatives? A. Well, we started out with the $200,000.00, as I recall, which was the maximum under the policies, under any interpretation of the policies, that could have been recovered. I can't specifically answer your question. The first figure that I recall from reading my notes, and I confess I don't have any independent recollection other than these notes, but the insurer offered $60,000.00 in June of 1967. And I believe at that time we were asking for something over a [10] hundred thousand dollars.

Q. You don't remember whether or not the $60,000.00 was the first figure that was offered by the insurance company? A. No, I don't. I think that it was but I don't recall. I am not positive.

Q. When was it that final agreement was reached with the insurance company concerning the business interruption policy? A. Approximately August 25, 1967.

Q. And was that the final formal agreement when you had an exchange of correspondence? A. No. That was the point at which there was a meeting of the minds. Subsequently the adjusters made up a proof of claim for us and we had the company sign it and it was forwarded. The actual money was received on about September 22, 1967.

Q. Now, in connection with the business interruption insurance would you describe for us the general disputes between your client and the insurance carriers? A. Well, the first area of dispute of course is the one I referred to before. That is, when should rebuilding start if there were going to be rebuilding. Or, put it another way, how much time does an insured have to make plans to rebuild. We were in dispute over that point. And of course this, coming on the front end, would extend the period to be [11] covered by the business interruption.

The second, not necessarily in order of importance at all, but the second area of dispute was whether in projecting the time within which there had to be repair or rebuilding, whether you had to project it on the basis of rebuilding the same kind of building exactly that you had before or whether you could take the time to have architectural services to, well, upgrade technically your building. And we had a dispute about that. Our position was that you didn't have to assume that you had to build an exact replica of the building that was destroyed, that you could under this policy, and it would

extend the time, that you could take the time to request architectural services and that you could actually improve the building that you rebuilt.

A third area of dispute, at the time of the fire the employees or probably ninety percent of the employees of the manufacturing plant, at least of the company, were on strike. A dispute arose as to the projected length of that strike. And this of course was of significance in determining what your net profits would have been had there not been a fire and how long would the strike — obivously then profits were down considerably when there was a strike, and the area of dispute was, well, when would that strike have ended. And we obviously, I guess, took the position, a position that it would have probably ended a lot sooner than at least the [12] adjusters were willing initially to agree that it would have ended.

Then we got in an area of dispute as to whether — let me strike that and say if you are trying to determine under business interruption loss what really the actual loss sustained was, and that's measured by, roughly stated, the net earnings you would have received had you been in business plus any fixed expenses and charges that would have kept going anyway, and we got into an argument there as to whether it was the actual expenses, had to be actual out-of-pocket expenses on the part of the company before they could be reimbursed for them, or whether you ought to project expenses just like you project gross profit, and therefore net profit, on the theory that they were going to get back in business. And we had an argument over that. They took the position that it was only actual out-of-pocket costs that were recoverable. We took the position that this was not true,

that you projected those as you projected your net profits on net earnings.

Well, I would call this minor in the whole picture, but there was some dispute over what expenses were covered, expenses which are incurred to reduce the loss, like supposedly covering machinery that still has some usable value, yet it is out in the open because the roof of the building is gone. And these sort of things. And there was also some dispute [13] as to how we arrived at net earnings. They of course had their accounting firm and we had ours, and they didn't agree specifically on how you arrived at net earnings.

So those were the areas. I would say the first three I mentioned, as I recall it as I thought at the time, were probably the major areas of dispute.

Q. Now, the first two areas that you related were the question of the time for making plans to reconstruct, and the second item you mentioned was whether you had to construct an identical structure or you could modernize or whatever? A. Yes.

Q. Aren't those two really part of the same issue that was raised, how much time do you have at the beginning of the period to begin your plans for reconstruction? A. Well, they are similar. No, they are not the same, I would say. What we were talking about initially, and shortly after our preliminary meeting of October 8, 1965 I received a letter, for instance, from the Adjustment Bureau and I have forgotten from whom from the Bureau. I think it was Wilson Keller, and in effect trying to pin us down as agreeing or having agreed that construction would certainly begin as of this time, that you have had enough time to recover from the shock of the fire loss and it should begin. And we immediately rebutted that letter

by saying that there [14] was no such understanding and that certainly we were not going to be bound by that. But the question of the architect and using architectural services didn't come up until later. It was the same sort of thing, sure, but it was separate from the recovery, so to speak.

Q. Did the parties ever reach agreement on what the recovery period should be? A. No, I don't think we ever did.

Q. How about on the architects, second item that you mentioned? A. We never really reached agreement on that either.

Q. The third item, the strike, did the parties reach agreement on the probable length of the strike? A. No, we didn't reach agreement — I can't say that we did reach agreement on that point either.

Q. The actual loss determination, did you reach any agreement on that? A. We finally settled the claim.

Q. That's the ultimate question, isn't it, with a policy like this, the actual loss? A. I'd say it is the ultimate question, yes.

Q. All these other questions are subsidiary to it and are — A. No. I wouldn't say they are subsidiary to it because if you are talking about actual loss in amount of dollars, [15] of course that's a little different in talking what's covered, what kind of expenses, for instance, are covered. Do you take actual expenses or do you take projected expenses. This goes to the extent of coverage, not just to a dollar amount. The point I am trying to make here, of course, is that we just didn't sit down and figure, well, we come to an agreement what net profit was. There were a lot of elements that could have affected net profit other than the experience of the company in prior years.

Q. All right. Now, the dollar recovery on this thing, Mr. Snyder, did that represent a recovery of actual loss less expenses incurred to reduce the loss? Is that what you were trying to get to? A. We were trying to get to some figure for actual loss, yes.

Q. All right. Is the question of expense incurred to reduce the loss a part of actual loss as you are using that term? A. Well, it is if you can agree on what's included in, properly included in expenses incurred to reduce loss.

Q. The question of how long the strike would continue, that was a question which presumably had to be answered in order to arrive at actual loss, isn't that true? A. Yes.

Q. And the same thing with respect to the time for [16] beginning reconstruction, that entered into the question of what the actual loss sustained by your client was, wouldn't it? A. Yes, it would.

Q. And the same would be true of the question concerning architects, which we discussed earlier, that that entered into the determination of what the actual loss was? A. An actual loss, yes, as dependent on the period of time in those respects, the period of time covered, and of course there was a dispute over the period of time covered.

Q. Did the same individuals from General Adjustment Bureau represent the insurance companies for it? A. Well, my answer to that is yes, although let me say this, that Wilson Keller died I would say probably half way through the negotiations. So that he was in on the earlier negotiations which were largely building, and he wasn't in, of course, on the later negotiation which were partially personal property and business interruption insurance.

Q. And you indicated earlier that Mr. Keller was the top man for the General Adjustment Bureau on this? A. Well, if I did I didn't mean to because I never really knew who was the top man. One would sort of come at you from one direction at one time and another from another. I don't remember whether this was some preconceived plan of operation they had or whether one of them was a little more familiar [17] with the type policy than the other one. I think Mr. Keller was senior chronologically b utI don't know that he was top man for the purposes of this negotiation.

Q. When did negotiation begin on the building insurance? Let me back up. Were there separate negotiations concerning the building policy and the personal property contents policy? A. Well, not entirely, no. They overlapped considerably, as did the business interruption insurance overlap some. We started out, I would say, with the original meeting of hard negotiation. The first matter brought up was the building loss and, as I recall that, that took probably all of that meeting and maybe a couple of others, but down the line we started talking about personal property loss at the same time or at the same meeting that we were talking about building loss.

Q. And when did the negotiations begin concering the building? A. Well, had negotiations began, as I recall, in December of 1965. We had a meeting that 21st or 20th of December in these offices. And that's when my recollection is that my feeling is that hard negotiations began at that point.

Q. And can you tell me what the proposals were on each side at that point in time? A. Well, as I recall, and again we had filed a proof of [18] loss prior to that time claiming the limit, the maximum limit as specified in the policies, of $225,000.00. At this meeting, as I re-

call, General Adjustment — I am not sure that this was an offer — but the figure, as I recall, of $93,000.00 or $97,000.00 came up and they based this, however — immediately we got into the area of whether a reproduction co-insurance clause applied to this insurance, which in substance if it did would have reduced the loss that we could otherwise recover under these policies by some forty-three percent.

Q. Could you explain in some deail what that's about, sir, because I don't really understand it. A. Well, I could do my best to explain it. I am not sure in what detil. But under this reproduction co-insurance clause endorsement, if it was required to insure the building at the reproduction cost of the building less some depreciation. And of course your premiums are paid. The amount of your premiums are contingent upon the value of the building. Our coverage was $225,000.00 total. When we got into some preliminary negotiations some of the cost of reproduction were estimated over $400,000.00. And what the clause, again, if effective, would mean is that your actual loss coverage is reduced by a percentage which is equal to the percentage difference between the amount that you had covered and the actual reproduction cost. [19]

That may not be a good explanation but obviously the purpose of this is to make sure that you don't purposely carry your building, and I suppose it could apply to machinery, too, purposely low and then claim up to the maximum amounts of the policy even though there is not a total loss. And this was our first and probably the biggest problem we had with this building loss.

Q. And your client's position was that this co-insurance clause did not apply, is that right? A. Yes, that was definitely our position.

Q. And what was the basis for that position? A. Well, I'd say initially that it was our position that the accurate interpretation of the clause would make it optional with the insurer as to whether or not that clause was going to apply. How valid that interpretation was, frankly, I don't know.

Secondly, it was our position that the amount of our coverage, the amount of the coverage of the company, was set after discussions with the Atkinson-Dauksch and Tallmadge Agencies, which were also representatives of the insurers, and that the insurers were now estopped to claim that this reproduction co-insurance clause applied to reduce the extent of the liability in this case. So basically those were the positions.

Q. And how was that question ultimately resolved? **[20]** I don't think the question ever was resolved.

Q. How much was the final recovery under that policy? A. The final recovery was $174,595.05.

Q. The $97,000.00 figure proposed by the insurance company in the first instance with respect to the building, was that based upon their concept of this co-insurance clause? A. Well, it was based upon their concept of the co-insurance clause plus the estimate cost of repair of the building, which was estimated by a general contracting firm that they had hired for this purpose. We had an estimate, too. Our estimate was higher than theirs.

Q. Was that a question of repair or replacement at that time? A. Well, that was also a part of the question, whether there was sufficiently left of this building that could be safely and usefully repaired or whether you had to start from scratch. That also entered into the negotiations and the discussions. Again, their contractor was of the opinion that it could be repaired. Ours was of the opinion that while it could be repaired it was far better to replace it because, money-wise, in the long run it would

be saving money to replace it rather than repair it.

Q. Was agreement ever reached on whether the figure should be computed based upon a cost of repair or cost of replacement? [21] A. No. That was never resolved. We finally just agreed upon a figure.

Q. What other disputes were that in connection with the building policy? A. Well, we had a dispute — again, you are trying under the terms of the policy to arrive at the actual cash value, what you are trying to arrive at actually is the cash value of the building. And there was a dispute whether you took the original cost of the building and depreciated over some agreed upon life of the building and arrive at it that way, or whether you took replacement cost, in other words, the cost of replacing it today and depreciated it for an estimated useful life to arrive at your actual loss. They took the position that it was determined by original costs, as I recall, less depreciation, and it was our position that it should be based upon a reproduction cost now less what it would be depreciated over the length of the life of the building.

Q. Was there any dispute as to the depreciation rates? A. Well, yes, there was some dispute as to the rates. As I recall, the total depreciation rate that the insurers or representatives of the insurers first urged upon us was thirty percent. I don't recall how they arrived at that, over what period of time and how it was depreciated, straight line and et cetera, but just on the total we disputed that. [22] We thought that was too high, a thirty percent depreciation.

Q. Was that thirty percent of replacement cost or original cost? A. As I recall, it was thirty percent of original cost.

Q. Was the depreciation question ever resolved? A. No.

Q. Did the parties get any closer on it? A. No. I think

what frequently happened here, it must be obivous to you now, we get into what really were irrevocable positions in theory. And we just have to back off, and ultimately we did agree on a figure without really the determination of how it was arrived at, at least agreed upon determination of how it was arrived at.

Q. According to the draft stipulation, Mr. Snyder, there was an agreement with the insurance company on May 20 of 1966 with respect to the building insurance. Do you have the draft in front of you? A. Yes, I do.

Q. Is that correct, May 20 of 1966? A. Well, I have no independent recollection of it. This draft I prepared back in December of 1969, and from my records and the file here I am quite sure that that's correct. But I would have to go through my files again to say other than it was prepared at that time. I am sure it was correct.

Q. The drafts says the Central Tablet accepted a [23] settlement. Would that have been a written acceptance? A. On the 20th, no, it would not have been. It would have been a meeting of the minds.

Q. And there would not have been a letter to General Adjustment Bureau "We agree to accept such and such"? A. Not on May 20. What would happen, because on May 20 as the result of either a phone call or meeting, and I don't recall which, I would have said to representative from The General Adjustment Bureau, "Well, if you get this amount I think my people will go along with it." And then he would say, "Well, all right, I will check with the insurers. If it is agreeable with them or it looks like they are going to accept it I would prepare proofs of loss and submit them to you and you have your client sign them and submit them to me."

And that would take—well, as the draft indicates that took approximately a month. But this is like any

other negotiation. When we say settlement, the insurers never authorized, at least that was always my understanding, The General Adjustment Bureau to settle the case right on the spot. They always reserved the right to reduce any proof of loss that we submitted as a result of what we considered a meeting of the minds.

Q. Now, six days prior to that, on May 14, 1966, the shareholders of Central Tablet voted to liquidate. Was that [**24**] decision made because a meeting of the minds was imminent with respect to this policy? A. No.

Q. They weren't trying to get the benefits of Section 337 of the Internal Revenue Code with respect to these proceeds? A. Well, let me say this. If we thought that we were going to settle at that time I am sure we would try to get the benefits, but we had no idea that we could have settled this matter at the next meeting if it even was set up at that time. Frankly, that special meeting I am not sure I even attended as a matter of fact, or whether it was a meeting or whether it was by unanimous action of the Board of Directors under the Ohio Revised Code, but it was based upon the fact that it is evident that they are not going to get back in business.

Q. That wasn't evident until that time? A. Well, I don't know whether it was evident exactly or not. Frankly, it was pretty evident to me. I am not sure it was evident to the Board of Directors of Central Manufacturing Company.

Q. With respect to the personal property and content insurance what dispute if any arose concerning it? A. Well, there was a dispute, and one area of the dispute was what machinery and equipment was total loss and what was repairable. That was one area of dispute. There [**25**] was also a dispute over whether some of the loss was incurred because of the fire or whether it was in-

curred by a lack of protection of the machinery after the fire by Central Tablet Manufacturing Company, specifically the roof of the buildings and most of the walls were all gone and some of them where the floor did not fall in and some of the equipment was standing to the elements, the insurance adjusters claimed that the loss was due from rain and failure to adequately protect the machinery. That was an area of dispute.

We also got into the question here, as we did pretty much with the building, and that is whether the machinery is to be valued for the purposes of loss at its original cost less depreciation or whether its reproduction cost less some amount of depreciation. This was all with regard to, as we referred to them, as the fixed assets. We then got into the questions on the purchased goods inventory, which frankly I don't think they are involved here. I don't know whether you want me to go into those or not, and how you determine what your inventory was. And how it should have been reported, whether it was reported properly for the purposes of determining the premium.

Basically those are the three areas of dispute. There was also some question of the cost of repairing those machines which admittedly were repairable, and they had an alleged [**26**] expert, and I had no reason to believe he wasn't, but an expert by the name of MacLean who viewed the property, the equipment and fixed assets at least two times, one of which I was there, and gave his estimate on some of the larger machinery that could be repaired, what it would cost. We also had a person whom we considered to be an expert to look at this and he gave his estimate. Those estimates varied considerably, I would say.

Q. Now, this morning you made available to me sev-

eral files pertaining to the insurance negotiations. Are these all of the files that you have concerning it, sir? A. Concerning what?

Q. The insurance negotiations. A. Those are all of the files that I have, yes. I have in my possession two of my case files. I don't think that there is anything in there that isn't of a legal, argumentative nature, but I wouldn't swear that there isn't a paper in there that might properly be in there. Basically those are the files which relate to negotiations plus this file that I have before me now and have been referring to and which you also were furnished.

Q. Mr. Snyder, I am pretty well finished with the questions on these insurance negotiations and I would like to discuss with you on the record to find out exactly where we are in disagreement on the issues. Now, this may be getting [**27**] a little out of line for a deposition and if you object to it we can cut it off. A. Let me hear your questions first. If I object to them —

Q. We are in agreement with respect to the dollar amount of capital gains on which your client would be taxable if Section 337 of the Internal Revenue Code does not apply. A. Would you read that question back?

(The question was read.)

A. Well, yes, I do object to answering these questions on the record, this question. If the others are similar I object to those. I am perfectly willing to sit down with you and discuss what we are in agreement on and what we aren't, but if the purposes of making it on the record are to get admissions obviously I will reflect on the pleadings and everything else before I make any such admissions.

Q. All right. In connection with the business interruption insurance negotiations, was it your client's posi-

tion that the business interruption period should be computed through May 31, of 1966? A. Basically our position was that it should cover so many months. I don't know what the date was and I am not really that —yes. As I said, and you have handed to me a letter of June 28, 1967, and a letter to General Adjustment Bureau in which I said, "As we stated to you at our meeting [28] on June 21, 1967 and previous meetings we feel strongly that an estimated period of business interruption in this case cannot be reasonably less than thirty-seven and a half weeks or from the time of loss to May 31, 1966."

MR. CSONTOS: No further questions.

Do you want to sign this deposition or do you waive signature?

THE WITNESS: I waive signature.

(Thereupon, at 10:40 o'clock a.m., Tuesday, October 19, 1971, the deposition was concluded.)

CERTIFICATE

[29]

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:
)

I, Irmgard E. Modlich, CSR, a Notary Public duly commissioned and qualified in and for the State of Ohio, do hereby certify that there came before me on the 19th day of October 1971 at 9:30 o'clock a.m., at 209 South High Street, Columbus, Ohio, the following named person, to-wit, Larry H. Snyder, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was there-

upon carefully examined upon his oath and his examination reduced to writing by me; that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 27th day of October, 1971.

IRMGARD E. MODLICH, *CSR, Notary Public in and for the State of Ohio.*

My commission expires
September 29, 1973

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION
CIVIL ACTION NO. 69-116

CENTRAL TABLET MANUFACTURING CO.,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

STATEMENT OF UNCONTESTED FACTS AND OF THE ISSUES

Come now the plaintiff and the defendant by their respective attorneys pursuant to the Court's order and submit the following statement of uncontested facts and of the issues, subject to their right, if a trial is held, to introduce further evidence not inconsistent with these facts and to their rights to object to the relevancy or materiality of any facts herein:

A. Statement of Uncontested Facts

1. Central Tablet Manufacturing Company, (hereinafter referred to as "Central Tablet"), for many years prior to May 14, 1966, was an Ohio corporation engaged in the manufacture and sale of writing tablets, school supplies, art materials and related items at Columbus, Ohio.

2. On August 13, 1965, a majority of the production and maintenance employees of Central Tablet went on strike over failure to reach a collective bargaining agreement with Central Tablet and production was reduced to approximately 5% of normal volume.

3. On September 10, 1965, and during the course of the strike, an accidental fire largely destroyed Central Tablet's manufactory and manufacturing equipment and machinery and its business offices.

[p. 2] 4. The buildings of Central Tablet were never rebuilt or repaired and the manufacturing equipment was never replaced or repaired following the fire, and the strike of production and maintenance employees was never settled and Central Tablet never again engaged in manufacturing.

5. As of September 10, 1965, plaintiff carried fire and extended coverage insurance on its building, and on its machinery and inventory. It also carried business interruption insurance. The stated dollar limit of liability on the building was $225,000 under three separate policies of $75,000, which were identical, except for the insurer. A copy of one of these policies is attached hereto as Exhibit 1. The stated dollar limit of liability on the machinery and inventory was $450,000 under one policy. A copy of that policy is attached hereto as Exhibit 2. The stated dollar limit of liability for business interruption was $100,000 under two policies which

were identical except for the insurer. A copy of one of these policies is attached hereto as Exhibit 3.

6. Negotiations of Central Tablet's claim for business interruption loss began on approximately October 8, 1965. Negotiation of the business interruption loss claim of Central Tablet produced a dispute between Central Tablet and its insurers as to the estimated period of loss to be covered by business interruption insurance and a dispute over the probable duration of the strike of the production and maintenance employees of Central Tablet, had there not been a fire, for the purpose of determining the "actual loss sustained" by Central Tablet during the period of loss covered under the insurance policies.

7. Negotiations of Central Tablet's insurance claims for building and machinery and personal property losses began on approximately November 1, 1965. Dispute arose as to the applicability of a co-insurance clause in the building insurance policy and as to the extent of the building loss and the value of the building at the time of loss and as to the value of machinery and equipment that was destroyed or damaged and as to the extent of damage to machinery and equipment and the cost of repair of repairable machinery and equipment.

8. On May 14, 1966, at a special meeting held pursuant to notice, the shareholders elected to dissolve Central Tablet and adopted a plan of dissolution and [p. 3] complete liquidation. A copy of the minutes of that meeting is attached hereto as Exhibit 4.

9. Prior to this time (May 14, 1966), neither the Board of Directors nor the shareholders of Central Tablet had adopted a formal plan of liquidation of the Company.

10. On approximately May 20, 1966, Central Tablet accepted a settlement of its building insurance claim

and on or about June 15, 1966, reecived $174,595.05 in payment of its building loss.

11. A certified copy of the Resolution of Stockholders and Plan of Dissolution, together with Treasury Department Form 966, was filed with the District Director of Internal Revenue, Cincinnati, Ohio on May 25, 1966.

12. On approximately August 25, 1966, Central Tablet accepted a settlement of its personal property insurance claim and on or about November 17, 1966, received $104,609.27 in payment of its personal property loss.

13. On May 3, 1967, all remaining assets after liquidating distributions to shareholders were conveyed to The Ohio National Bank of Columbus, Ohio, in trust for shareholders pending the complete winding-up of the affairs of Central Tablet, including the payment of taxes and the collection of its insurance claims and all other claims and choses in action. A copy of the appointment of the trustee is attached hereto as Exhibit 5.

14. On May 3, 1967, Central Tablet filed a Certificate of Dissolution with the Secretary of State of Ohio pursuant to Section 1701.86, Revised Code of Ohio.

15. On August 25, 1967, the directors negotiated a settlement of the insurance claim for business interruption loss and on or about September 22, 1967, received $67,000 in payment of the loss.

16. At all times relevant to the issues in this action, taxpayer reported its income for Federal income tax purposes on an accrual basis.

17. On approximately January 26, 1968, a fiduciary assessment was made against Central Tablet for the tax year ending October 31, 1965, in the amount of $70,051.30. This assessment was based upon the inclusion by the District Director of the following sums plaintiff received from fire and business interruption insurance:

[p. 4] (a) $223,669.00 (the excess of fire insurance proceeds over net book value and $4,000.00 legal fee assigned as a cost of sale) received from fire insurance after the adoption of the complete plan of liquidation on May 14, 1966, and distributed, together with all other assets of plaintiff, within the 12-month period beginning on the date of adoption of the plan of liquidation in accordance with Section 337 of the Internal Revenue Code of 1954 and included by the District Director as long-term capital gain in the year ending October 31, 1965.

(b) $12,992.00 which represents a pro-rata part of the sum of $67,000.00 received in the year ending October 31, 1967, from business interruption insurance payable as a result of the fire aforesaid.

(c) $20,764.00 which represents that part of the total proceeds from fire insurance which is attributable to gain as a result of depreciation under Section 1245 of the Internal Revenue Code of 1954, included as ordinary income by the District Director.

18. On February 8, 1968, Central Tablet paid the above deficiency assessment of $70,051.30 in full.

19. On approximately July 19, 1968, a deficiency assessment was made against Central Tablet for the tax year ending October 31, 1963, in the amount of $11,930.30. This assessment resulted from a decrease in the operating loss carryback to 1963 on the basis of the following adjustments by the District Director:

(a) The inclusion as income for the year ending October 31, 1966, of the sum of $54,008.00, which represents a pro-rata part of the proceeds of $67,000.00 received by plaintiff during the taxable year ending October 31, 1967, from business interruption insurance as a result of the fire occurring at plaintiff's premises on September 10, 1965.

(b) the disallowance as an expense in the year ending October 31, 1966, of legal fees in the amount of $4,000.00 [p. 5] paid by plaintiff during the year for services rendered in the negotiation and adjustment of the fire insurance losses.

20. On July 31, 1968, Central Tablet paid the above deficiency assessment of $11,930.30 in full.

21. On September 18, 1968, claims for refund of the deficiency assessments made against Central Tablet for the tax year ending October 31, 1963, and the tax year ending October 31, 1965, were filed with the District Director of Internal Revenue, Cincinnati, Ohio.

22. On approximately March 25, 1969, a Waiver of Statutory Notification of Claim Disallowance and Acceptance of Proposed Disallowance of Claim for Refund or Credit, was filed with the District Director of Internal Revenue, Cincinnati, Ohio.

23. More than six months having elapsed since the filing of its claim for refund, Central Tablet's initiation of the instant proceeding on April 16, 1969, is timely, and all other jurisdictional prerequisites have been satisfied.

24. Although plaintiff does not agree in any way or part with the legality or validity of the District Director's legal conclusions or of the deficiency assessments, based upon such conclusions, which are the subject of this action, it does agree to the arithmetical breakdowns by the District Director, which are shown in paragraphs 17 and 19 above.

B. **Defendant's Statement of the Issues**

1. Whether the $223,669 of gain attributable to the fire insurance proceeds with respect to the building, the machinery and the inventory is exempt from taxation by reason of Section 337 of the Code.

2. If plaintiff is taxable on the gain attributable to the

fire insurance proceeds, whether since plaintiff is on the accrual basis of accounting the income is taxable in plaintiff's tax year ending October 31, 1965, or 1966.

3. Whether plaintiff is taxable on $12,992 and $54,008 for its tax years ending October 30, 1965, and 1966, respectively, which represents the pro-rata portions of the $67,000 of business interruption insurance proceeds received by plaintiff during its October 31, 1967, tax year.

[p. 6] 4. Whether $20,764 of fire insurance proceeds which represents income from the recapture of depreciation is taxable to plaintiff during its tax year ending October 31, 1965, as defendant contends, or during its tax year ending October 31, 1966, as plaintiff contends.

5. Whether plaintiff is entitled to a deduction of $4,000 for its tax year ending October 31, 1966, for legal fees attributable to negotiations and settlement of the insurance losses.

C. **Plaintiff's Statement of the Issues**

1. Are the nonrecognition of gain provisions of Section 337 of the Internal Revenue Code applicable to the fire insurance proceeds received as a result of the fire losses to the building, machinery and inventory.

2. If Section 337 of the Code is inapplicable to the insurance proceeds from the fire losses to the building and machinery and inventory, are these proceeds taxable in plaintiff's tax year ending October 31, 1965, the year in which the fire occurred, or in the tax year the proceeds were received.

3. Are the proceeds from business interruption insurance taxable, proratably, in plaintiff's tax years ending October 31, 1965 and October 31, 1966, the years of the loss period, or in plaintiff's tax year ending October 31, 1967, the year in which the proceeds were received by plaintiff.

4. Is $20,764 of fire insurance proceeds, representing income from the recapture of depreciation under Section 1245, taxable in plaintiff's tax year ending October 31, 1965, the year in which the fire occurred, or in plaintiff's tax year ending October 31, 1966, the year in which the proceeds were received.

5. Whether plaintiff is entitled to a deduction of $4,000 for its tax year ending October 31, 1966, for legal fees attributable to negotiations and settlement of the insurance losses.

Respectfully submitted,

LARRY H. SNYDER,
209 South High Street,
Columbus, Ohio 43215
WILLIAM W. MILLIGAN
United States Attorney
By: /s/Stephen J. Csontos
STEPHEN J. CSONTOS
Trial Attorney-Tax Division
Department of Justice
Washington, D.C. 20530
202-739-3659

[Exhibits 1 through 3 omitted]

EXHIBIT 4

CENTRAL TABLET MANUFACTURING COMPANY SHAREHOLDER RESOLUTION AND PLAN OF DISSOLUTION

May 14, 1966

The shareholders of Central Tablet Manufacturing Company, at a meeting held for the purpose of voting upon the voluntary dissolution of the Corporation, by the affirmative vote of the holders of shares entitling

them to exercise two-thirds of the voting power of the Corporation on such proposal, take the following action:

RESOLVED THAT, Central Tablet Manufacturing Company be dissolved and that the dissolution of the Corporation, the winding up of all of its affairs and the distribution of its property shall be in accordance with the following plan of liquidation:

1. The Board of Directors and/or the authorized officers of the Corporation are authorized to proceed with negotiations for the sale and to sell the assets of the Corporation and to adjust and settle any and all insurance claims of the Corporation on such terms and for such amounts as is determined to be in the best interests of the Corporation, and to take legal action or other appropriate action in the event that insurance claims cannot otherwise be adjusted or settled, and to take any other actions necessary or appropriate to liquidate the assets of the Corporation and to wind up its affairs, including the payment of all debts, fees, taxes and expenses and other charges of the Corporation to the date of dissolution and all charges and expenses payable in connection with the dissolution and winding up of the affairs of the Corporation.

2. In accordance with the terms of the Class A Preferred Stock of the Corporation, holders thereof shall be entitled to be paid the par value of their shares plus all accrued and unpaid dividends at the cumulative rate of 3% per annum out of the assets and funds of the Corporation before any distribution is made to Common Stockholders; thereafter, all of the assets and funds of the Corporation shall be distributed to Common Stockholders proportionately with the number of shares owned by each.

3. The dissolution shall be completed within one

year from date hereof and the President of the Corporation is authorized and directed to file Form 966 with the District Director of Internal Revenue.

4. The President and Secretary of the Corporation shall file a Certificate of Dissolution with the Secretary of State of Ohio and take all other necessary steps required by Section 1701.86, Revised Code of Ohio, for the voluntary dissolution of the Corporation.

5. The Board of Directors and/or the authorized officers of the Corporation shall take immediate steps to terminate all business activities of the Corporation and proceed with the necessary steps to wind up its business affairs and to consummate the dissolution.

* * * * *

[Signatures omitted]

I hereby certify that the foregoing is a true and correct copy of the Resolution of Shareholders of Central Tablet Manufacturing Company and Plan of Dissolution adopted at a special meeting of shareholders held at Columbus, Franklin County, Ohio on May 14, 1966.

/s/ Raymond E. Kessler
RAYMOND E. KESSLER, Secretary
Central Tablet Manufacturing Company

Dated this 19 day of May, 1966

TRANSCRIPT OF PROCEEDINGS
HELD DECEMBER 21, 1971

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

CIVIL ACTION NO. 69-116

CENTRAL TABLET MANUFACTURING COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

[Tr. 3]

JAMES WROE

Called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

by Mr. Csontos:

Q. Would you state your full name and home address for the record, please? A. James Albert Wroe, 2154 Tremont Road, Columbus.

Q. And what is your present occupation? A. Insurance adjustor.

* * * * *

Q. All right. So, you were employed by the General Adjustment Bureau from about 1958 through 1967? A. Correct.

Q. And what period of time was here in Columbus with the General Adjustment Bureau? A. I was in Columbus two different times. I was here in 1949 through 1951, and then I returned in 1960 until my termination in 1967.

Q. Now, could you describe for the Court the function

of the General Adjustment Bureau? A. We function solely upon assignments from insurance companies to investigate all types of insurance claims for them, reporting solely to them and, of course, negotiating adjustments pursuant to those insurance contracts.

Q. Now, when a case is assigned to you or was assigned to you at the General Adjustment Bureau by an insurance company, what would normally be done at first in connection with this particular claim? A. With the particular claim at hand?

Q. Yes, sir. A. Well, of course it is identical to most of them we receive normally as assignments to the company's agent. That is the local insurance agent, or we did that. We received the assignment from them, and we confirmed that the coverage is current and proceed to the risk; that is, the property, and in this case as it was fire, we established that there was a fire and subsequently or ultimately as to what the extent of damage is.

Q. As an adjustor with the General Adjustment Bureau, did you make decisions concerning whether or not there was coverage or liability under a particular policy? A. Yes, I think we determined coverage and liability.

Q. And at what point in time would that be with relation to the time when the assignment was made to the General Adjustment Bureau? A. Well, in the instant case, what we are talking ab:out when we are speaking of fires, it was obvious that there was a fire. It was in progress when I was first on the scene. Now, liability is is not a factor there. I mean, the contract provides the coverage for fire, and what remains then, is to establish the extent of damage.

* * * * *

Q. All right. Now, if there had been a question in your mind as an adjuster with respect to these matters,

would the matter have been discussed with the representatives of Central Tablet Manufacturing Company? A. The question of the policy being voided?

Q. Yes, sir. A. Yes, certainly it would have been discussed with representatives of Central Tablet.

Q. Now, if a question such as that arises, does the General Adjustment Bureau have final authority to make the determination on that? A. No, I don't think they would have any authority. We are only agents as adjustors for the companies, and we only report to them our findings. All the decisions as far as the policies' interpretation would have to be done by the companies.

* * * * *

[Tr. 8]

* * * * *

Q. There were negotiations concerning the amount of liability of the insurance companies under these various policies, weren't there, sir? A. Amount of loss, is that what you mean by liability?

Q. Yes, sir. A. Yes, sir.

* * * * *

CROSS-EXAMINATION

by Mr. Snyder:

Q. Mr. Wroe, as I understand it from your testimony, General Adjustment Bureau was the negotiator for all of the insurance claims that were presented by Central Tablet Manufacturing Company. A. That's right.

Q. Now, that included business interruption insurance, building insurance, and personal property insurance did it not? A. That's correct.

Q. You participated in some degree in all of the negotiations, did you not? A. In some degree, yes.

Q. And in the process of negotiating these claims, the claims were considered simultaneously, were they not?

What I am getting at is one wasn't necessarily gotten out of the way before another was discussed, was it? A. I think during the progress of the adjustment process, we did many times discuss various phases of all three sections, but of course, obviously they were resolved at different times. They weren't all resolved at one time.

Q. Do you recall the approximate period of time of the negotiations with Central Tablet Manufacturing Company?

MR. CSONTOS: Your Honor, we stipulated as to when the fire occurred, as to when the supplement was arrived at, and when the amounts were received, and I don't know that this witness has independent recollection after that time of this nature.

THE COURT: I am going to permit him to answer, Mr. Csontos. I am not sure where it is leading.

MR. SNYDER: I am just trying to get a little background for the next question, Your Honor.

THE WITNESS: As I recollect, the fire occurred September 10, 1965.

Q. (By Mr. Snyder) That's my recollection too. A. And we, of course, commenced work on it at that time, and I actually do not know when any of them were settled. I am sure that one of them was settled the following year, during '66. I am not exactly sure that I was even here when the other two phases were concluded.

Q. Let me ask you this question, Mr. Wroe: Isn't it true that there were a number of meetings between you and other representatives of General Adjustment Bureau and representatives of Central Tablet Manufacturing Company over a considerable period of time to attempt to settle these claims? A. That's correct.

Q. Now, referring specifically, Mr. Wroe, to the bus-

iness interruption insurance, isn't it true that the policy purported to cover the actual loss sustained during the period of the business interruption as measured by gross earnings less cost and expenses that were not incurred?

MR. CSONTOS: Your Honor, the policy is in evidence. It speaks for itself. It is in evidence. He is asking him what the terms of the policy were.

THE COURT: Now, Mr. Snyder, you may speak.

MR. SNYDER: Yes, Your Honor. Let me say this: I don't think there is any secret here. The question is whether the liability was — this is one of the large questions in this whole case, whether the liability was fixed in certain. I am attempting to show, frankly, through this witness that at least the extent of the liability was not fixed in certain during the time that the district director purported it to be. I am attempting, frankly, to establish through this witness, that there were a number of factors involved here upon which the General Adjustment Bureau and Central Tablet Manufacturing Company did not agree. The only way I can get to that is to ask a specific question of this nature. **[12]**

THE COURT: I am going to overrule the objection. You may proceed.

Q. (By Mr. Snyder) Mr. Wroe, isn't it a fact that in determining the business interruption loss that gross earnings are a factor to be considered? A. In this policy, yes.

Q. In this policy, that's what I am talking about. A. There are different methods to write business interruption. This was a gross earnings form.

Q. And isn't it also a fact that the length of time required to get back into business is a factor to be considered? A. The policies of this nature state with due diligence and dispatch.

Q. Now, in determining the period of due diligence and dispatch necessary to get back into business, isn't it true that under this particular policy, a reasonable time under the interpretation of this policy was allowed for planning and adjustments before the actual time of construction or repair or whatever it is commences? A. Well, in all policies, there is a reasonable time from the date of the fire that is necessary, and it would vary, of course, from one instance to another.

Q. Now, do you recall whether the insurers and the insured in this particular case agreed on what a reasonable [13] time would be for the planning and adjustment before the time would starting running for the construction and repair? A. I don't personally remember whether it was agreed or disagreed. I am sure it was a matter of negotiation because this was a case where it never was rebuilt.

Q. So, we had to project everything; is that not correct? A. That's correct.

Q. Were the insurers and the insured in this case ever agreed upon what a total reasonable time of suspension would be? A. I personally don't think I was in on that final part. Obviously, it was agreed or there wouldn't have been a payment.

Q. Well, not necessarily, Mr. Wroe. Let me ask you this: Do you recall that at the time of the Central Tablet fire on September 10 of 1965 that the production and maintenance employees were out on strike? A. Yes, they were.

Q. Do you recall that at that time production was practically at a standstill? A. That's correct.

Q. Now, with production at a standstill, this would affect gross earnings, would it not? A. Certainly. [14]

Q. Now, wasn't there an issue and wasn't there a dis-

pute in this case as to the projected length of time of that strike? A. Yes.

Q. And didn't the insurers and the insured disagree as to the probable duration of that strike, the projected duration of that strike? A. I am sure that couldn't have been more than conjecture. It had to be negotiated.

THE COURT: Mr. Snyder, do let the witness finish his answer.

MR. SNYDER: I am sorry.

THE COURT: Would you finish your answer.

THE WITNESS: I say that, yes, they were on strike and the period that the strike would have continued is a matter of conjecture. It is bound to have been negotiated or a disputed item. From my knowledge, there have been no definite arrangements or time established by the union negotiators and the owners as to when they are going to go back to work, so it is a matter of conjecture.

Q. But you will agree that this item, this element becomes a factor in determining the amount of loss, will you not? A. Yes, sir.

Q. And you are also agreeing, or do you recall that [15] that element, the length of time, was in dispute? A. Yes, sir.

Q. Was there ever a specific agreement reached, to your knowledge, about what the duration of the strike probably would have been had the company gone back in business? A. I don't recall. I don't think that could have been done. It went on for over a year's time, and I don't think I was even involved in the final disposition of that.

Q. Well, isn't it a fact, Mr. Wroe, that no specific conclusion was reached, but the final settlement was merely a compromise in the positions taken by both sides of this? A. I think that's a fair statement.

Q. Mr. Wroe, you also participated in part, at least,

in the building loss negotiations, did you not? A. Yes, sir.

Q. Do you recall that on approximately November 5, 1965, Central Tablet or representatives, agents of Central Tablet submitted what was labeled a proof of building loss? A. My review of the file since that time supposedly establishes that, yes.

Q. I don't mean to cut you off.

THE COURT: Do finish your answer, Mr. Wroe.

THE WITNESS: I don't specifically remember this, no. [16]

Q. (By Mr. Snyder) You don't specifically remember? A. No.

Q. Do you specifically remember that the General Adjustment Bureau acting as representatives or agents of the insurers of the building instructed you to write the Central Tablet saying that those proofs of losses were rejected as such? A. That's right. I do remember that.

Q. I believe you testified on direct examination that under these policies it was incumbent upon the insured to file a proof of loss within 60 days; is that correct? A. I think I said the contract provides any insured to file a proof of loss within 60 days.

Q. What happens if it not filed within 60 days? A. The insurance companies interpret their own contracts. The contract provides for this. If they do not file it within 60 days, we so inform the insurance companies, and then we abide by their rulings on this whether or not we continue our participation in the adjustment process or so advise the insured that the insurance companies have chosen not to provide coverage.

Q. I see. Would your answer be the same in the event that a proof of claim is rejected for not being properly filed? A. State that again. I don't understand. [17]

Q. Well, let me put it this way: What is the effect of

an insurance company informing the insured that they have not properly filed a proof of claim? A. In this case, we were instructed to reject the proof of loss as not having satisfied the contractual conditions.

Q. This building loss policy, and I am not too familiar with the terms, so bear with me, carried what is called as a replacement cost endorsement co-insurance clause; is that not correct? A. My memory is that it did.

Q. What generally is the purpose and effect of this sort of a clause? A. First of all, the replacement cost endorsement is either sold by the agents or bought by the insured for the purpose of having put back new materials where the previous ones had certain age or physical deterioration on them. The co-insurance clause is an application where the insurance company requires that the insured carry coverage up to a sufficient limit or up to a sufficient amount so that they will get adequate premiums to justify affording this replacement cost coverage.

Q. What happens if in a particular case the coverage isn't high enough to get the premiums that the insurer thinks they should have received? [18] A. The adjustors have nothing to do with premiums.

Q. Well, what happens if the insurers take the position that the co-insurance clause is effective in a case like this? A. The co-insurance clause contains its own wordage as to the effect of it, and it is written between 80 and 90 percent. I mean, if it is 80 or 90 percent, it is shown and the premiums are chosen from that. If you choose to maintain limits up to that amount, then your coverage is based on a formula as to the amount that you are deficient; that is, the amount carried over the amount required times the loss.

Q. Your coverage, in effect, is reduced, then; is that not correct? A. Yes.

Q. In fact, Mr. Wroe, didn't a dispute arise in this case as to the aplicability of a co-insurance clause in that policy? A. I really don't think I can answer that. We had numerous discussions and co-insurance is also an application in that type of coverage and also a part of a replacement cost coverage. It is also required that you collect replacement cost provided that the actual replacement be accomplished on the same premises. So, I really don't know how deeply we got involved in the co-insurance clause [**19**] application.

MR. CSONTOS: If it please the Court, if it will save time, the Government has stipulated to the fact that the dispute arose concerning the co-insurance clause. It is in the stipulation.

THE COURT: All right.

MR. CSONTOS: As is much of this other testimony.

THE COURT: Mr. Snyder, did you plan to question further on that issue?

MR. SNYDER: No. I think I have exhausted it, Your Honor. He has answered that he has no recollection, as I understood him, and it is a matter of stipulation. Let me say this: I don't know that I am limited in the extent to which I can cross-examine this witness on what we are here for.

THE COURT: Mr. Snyder, I ame not seeking to limit you, but if something has been stipulated to, it really dosen't serve much purpose to interrogate him on that subject.

MR. SNYDER: No, sir, but let me by way of explanation say this: The only thing I was trying to bring out by this witness was if this co-insurance clause endorsement were in effect, it would have reduced the policy coverage by some 43 percent. So, this is what I am trying to say.

THE COURT: Do recall, Mr. Snyder, this is to the [20] Court. I do understand the option of co-insurance clauses.

Q. (By Mr. Snyder) Mr. Wroe, let me ask again referring you to the proofs of claim that were filed by the insured in this case, isn't it a fact that under all policies, the proofs of loss were rejected by the insurers, both as to business interruption insurance, real property, and personal property? A. As best I can remember, they probably all were rejected.

Q. Isn't it a fact, Mr. Wroe, that in considering the building loss, there was also a difference of opinion or disagreement over whether or not depreciation should be taken into account in determining the loss to the building? A. I don't think I can specifically answer that because if we are talking about a replacement cost endorsment, we are talking about replacement cost coverages and depreciation is not involved in it from the outset. So, I don't know.

Q. All right. Do you recall that the insurers or your company, I don't know which, retained a building contractor to examine the building and to give an opinion to you as to whether or not the building was repairable or had to be reconstructed? A. That's correct, we did employ a contractor.

Q. Isn't it true that the insured also retained a [21] contractor for the purpose of giving that contractor's opinion as to whether or not the building was repairable? A. I am sure that is correct.

Q. Do you recall that there was a difference in the opinions given? A. Yes, sir.

Q. They did not agree; is that correct? A. I am sure they did not agree.

MR. SNYDER: Let me try and telescope this a little, Your Honor.

Q. (By Mr. Snyder) You also participated to some degree in the negotiations of the personal property loss, did you not? A. Yes, sir.

Q. And I believe this was a single policy coverage, was it not?

MR. CSONTOS: That has been stipulated, Your Honor.

MR. SNYDER: I am trying to give the witness some lead in the questions. I know it has been stipulated.

Q. (By Mr. Snyder) Mr. Wroe, isn't it a fact that the insured and the insurers disagreed as to machinery that was repairable? What I mean by that is: Isn't it true that the insurers took the position that some machinery was repairable and that insured took the position that it was not repairable? **[22]** A. The same pieces of machinery?

Q. Yes. A. That is correct.

Q. Do you recall incidents like that? A. Yes.

Q. Do you also recall that in specific instances there was disagreement over the cost of repairing machines or equipment that was agreed to be repairable? A. I am sure that there was disagreement on that.

Q. Isn't it a fact that there was a disagreement or a difference of opinion over whether the loss coverage under the personal property loss was replacement cost less depreciation as contrasted with the net book value of machinery? A. As I remember, the difference in the manufacturers' output policy was whether it was a market value or a manufacturer's cost. I mean, replacement cost is not involved in this.

Q. In your opinion, it is not involved? A. That's my opinion.

Q. But you do recall there was a difference of opinion in how we arrived at the loss?

THE COURT: I think he testified to that, Mr. Snyder.

As I understand it, Mr. Wroe, there are two areas. There was a difference of opinion as to wether a specific piece of machinery was repairable and there was a [23] difference of opinion as to the cost of repairing machinery that was repairable.

THE WITNESS: The differences were based upon opinions of two different repair sources and, yes, sir, there was a difference in both cases, both as to whether a machine was repairable, and if a machine was repairable, what amount of money it would take to repair it, yes.

THE COURT: That was what I understood him to testify to.

Opinion And Order Of District Court May Be Found Beginning At Page 11 Of The Petition For A Writ Of Certiorari

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISON

Civil Action No. 69-116

CENTRAL TABLET MANUFACTURING COMPANY,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

Filed March 24, 1972

This action came before the Court for trial and the issues having been duly heard and the Court having rendered its verdict,

IT IS ORDERED AND ADJUDGED,
that the plaintiff, Central Tablet Manufacturing Company, recover $11,930.30 pertaining to its October 31, 1963 tax year and $69,862.09 pertaining to its October 31, 1966 tax year, plus interest provided by law, and its costs of action.

Dated this 24th day of March, 1972.

CARL B. RUBIN
United States District Judge

APPROVED AS TO FORM:

LARRY H. SNYDER, Esquire
Attorney for plaintiff

STEPHEN J. CSONTOS
Attorney for defendant

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Civil Action No. 69-116

CENTRAL TABLET MANUFACTURING COMPANY,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

NOTICE OF APPEAL

Notice is hereby given that defendant, United States of America, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the judgment entered in this action on March 24, 1972.

WILLIAM W. MILLIGAN
United States Attorney
By /s/ W. ROBINSON WATTERS
Assistant United States Attorney

Opinion Of The Court Of Appeals May Be Found Beginning At Page 22 Of The Petition For A Writ Of Certiorari

Judgment Of The Court Of Appeals May Be Found At Page 31 Of The Petition For A Writ Of Certiorari

SUPREME COURT OF THE UNITED STATES

No. 73-593

CENTRAL TABLET MANUFACTURING CO.

v.

THE UNITED STATES

Order allowing certiorari. Filed December 17, 1973.
The petition for a Writ of Certiorari is granted.

Supreme Court of the United States

No. 73-593

Central Tablet Manufacturing Co.,

Petitioner,

v.

United States

ORDER ALLOWING CERTIORARI. Filed December 17 ----------, 19 73.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth ----------Circuit is granted.